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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOYCE ANN MADDOCKS, as
Trustee,

Petitioner and Respondent,

v.

DAVID JENSEN et al.,

Appellants.

B265219

(Los Angeles County
Super. Ct. No. MP006716)

APPEAL from an order of the Superior Court of Los Angeles County,
Randolph A. Rogers, Judge. Affirmed.

David A. Shapiro; Orren & Orren, Tyna Thall Oren for Appellants.

Michelizzi, Schwabacher, Ward & Collins, David Collins and Charlotte
E. Costan for Petitioner and Respondent.

First American Law Group, L. Bryant Jaquez and Patrick Reider for
Gerald A. Holt and Mary E. Holt as Amici Curiae on behalf of Respondent.

SUMMARY

Appellants David and Steven Jensen¹ are brothers appealing from a probate court order confirming the sale of their father's house and personal property after his death. They contend the court committed reversible error when it failed to conduct an evidentiary hearing on their objections to the sale. Specifically, Appellants argue a hearing would have revealed evidence that their sister, Respondent Joyce Ann Maddocks who was acting as the trustee of their father's court-authorized trust, committed various fraudulent acts and that the court-authorized trust did not hold valid title to the house because it was held by a pre-existing trust. We affirm.

BACKGROUND

I. Prior Conservatorship Action

Because Appellants' claims concern issues pre-dating the instant action to confirm the sale of their father's house, we summarize the proceedings in the related case of *In re Conservatorship of Richard C. Jensen* (Los Angeles County Super. Ct. No. MP006444).²

In September 2013, Appellants' mother died. Appellants' father, Richard C. Jensen, suffered from dementia. David sought to be appointed Richard's conservator, alleging Maddocks and two other siblings were living in Richard's house and, he believed, misappropriating funds. Maddocks also sought to be appointed their father's conservator. The trial court granted her petition and, in February 2014, issued letters of conservatorship of the person

¹ Because several parties have the same last name, we refer to them by their first names. We intend no disrespect.

² On March 3, 2016, we granted Appellants' request to take judicial notice of six documents from the conservatorship case as well as three documents recorded with the Office of the Los Angeles County Recorder. Our summary is based on these judicially noticed documents as well as the record on appeal and the probate court's Statement of Decision in this case.

and estate of Richard C. Jensen to Maddocks. The petition sought to transfer assets, including their father's house, to Maddocks, as trustee of the to-be-created trust. David objected to the petition based on her alleged failure as conservator to file a timely inventory and appraisal of the estate.³ She filed a supplement to her petition, attaching a copy of a pre-existing trust--the 1991 Jensen Family Revocable Living Trust Agreement (Pre-Existing Trust). The Pre-Existing Trust named David as the trustee in the event of their parents' death or incapacity and listed their parents' house as one of the trust assets. The trial court granted Maddocks's petition and, in May 2014, entered an order authorizing her, as conservator, to execute the Richard C. Jensen Revocable Trust Established Pursuant to Court Order (Court-Authorized Trust) and to transfer the specified assets, which included the house, to the trust.

On July 26, 2014, Richard passed away. After his death, Maddocks, as conservator, filed an Ex Parte Application for Order Nunc Pro Tunc Correcting the Order for Substituted Judgment To Create and Fund a Revocable Trust and Pourover Will (NPT Order), seeking to have the court correct its prior order to expressly include a clause "revoking all prior estate planning documents" in order to allow her to marshal the estate's assets.⁴ In

³ Appellants have not provided a copy of David's objections to the petition for substituted judgment in their request for judicial notice. Thus, we are left with the trial court's summary of the objection in its July 10, 2015 Statement of Decision in this action which indicates that David did not otherwise object to the transfer of the house to the Court-Authorized Trust.

⁴ The need for the correction was prompted by Bank of America's freezing of Richard's account because the Pre-Existing Trust named David as trustee and the Court-Authorized Trust did not revoke prior trust, thus creating a dispute as to the person appointed trustee.

October 2014, the probate court granted her application and entered the NPT Order.

There is no indication in the record or in the judicially noticed documents that Appellants appealed from, or otherwise sought review of, this order or the prior orders in the conservatorship action.

II. Current Action

Turning to the underlying action in this appeal, in October 2014, Maddocks, as trustee of the Court-Authorized Trust, filed a petition for an order allowing the trust to sell Richard's house. The court granted this request by minute order.

In January 2015, Maddocks filed her first of two petitions seeking confirmation of the sale of Richard's house. The petition indicated that the house had been appraised with a value of \$240,000 and the prospective buyers had offered \$225,000, of which \$5,000 was for personal property left at the house. Appellants filed objections to the sale, arguing, *inter alia*, that Maddocks had obtained the Substituted Judgment in the conservatorship action without disclosing that the Pre-Existing Trust named David as the successor trustee and she had "potentially committed elder abuse" by bringing the incapacitated Richard to her attorney's office to discuss removing David as a beneficiary of the trust. By minute order dated January 22, 2015, the probate court denied the petition to confirm the sale of the house because Appellants had orally objected at the hearing, because the appraisal was made more than one year prior to the date of sale and Maddocks conceded the objection as correct. (See Prob. Code, § 10309, subds. (a)(1) & (a)(2).)⁵

⁵ All further statutory references are to the Probate Code.

In April 2015, Maddocks, as trustee, filed her second petition for an order confirming the sale of Richard's house, stating a new appraisal valued the house at \$205,000, and the prospective buyers had reduced their purchase price offer to \$207,000, of which \$5,000 was allocated for personal property. Appellants objected to the sale, arguing the valuation date of the new appraisal was not within one year of the date of the confirmation hearing and Maddocks had failed to adequately market the house, to inventory the personal items, and to accept David and Steven's higher bid. Appellants' written objections did not raise the validity of the Court-Authorized Trust's title to the house.

At the second sale confirmation hearing on June 18, 2015, Appellants attempted to raise their objection to the age of the appraisal, but were rebuffed by the court which stated, "I guess you are going to get me reversed because I'm not going to delay this any further." Instead the court asked if Appellants planned to over bid on the property. When Appellants raised their objection to the lack of an inventory of the personal property, the court stated, "You are not getting it. You either over bid or you don't." When there were no over bids,⁶ the court approved the sale of Richard's house and the personal property contents.

Appellants requested a statement of decision, asking the probate court to address the age of the appraisal and several issues related to the value of the house and its sale price, as well as issues with the sale of personal property. The request did not ask the court to address the validity of the

⁶ The prospective buyers' offer was for cash with a seven day close of escrow, which Appellants and another potential bidder could not match.

Court-Authorized Trust's title to the house.⁷ On July 10, 2015, the probate court issued a 15-page statement of decision, reviewing the litigation in the prior conservatorship action and the current action, and concluding that the sale met the requirements of the Probate Code and that Maddocks, as trustee, had made appropriate efforts to obtain the best price for the property.

Appellants filed a notice of appeal.

DISCUSSION

Appellants contend the trial court committed reversible error when it denied them an evidentiary hearing on their objections to the sale of Richard's house. Appellants argue that such a hearing would have revealed various fraudulent acts by Maddocks, as trustee, as well as the Court-Authorized Trust's lack of valid title of the house. Finally, Appellants contend that cumulative irregularities in the proceedings compel reversal of the sale confirmation order. We affirm.

Section 10310 of the Probate Code addresses the hearing on a petition for confirmation of the sale of real property. Subdivision (a) provides that the probate court "shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale." Subdivision (c) provides that "[a]ny interested person may file written objections to the confirmation of sale at or before the hearing and may testify and produce witnesses in support of the objections."

Here, the record shows that Appellants never indicated at the confirmation hearing that they wished to testify or produce witnesses in support of their written objections. Thus, it is inaccurate to suggest that the

⁷ Appellants' oral request at the hearing, only asked the court to address their objection based on the age of the appraisal.

probate court denied them an opportunity to present evidence. Indeed, the transcript of the hearing indicates that neither the court nor Maddocks disagreed with Appellants' factual assertions that the appraisal was made more than a year before the hearing and that Maddocks, as trustee, had not provided an inventory of personal property. In this context, we find no error in the probate court deciding the matter without an evidentiary hearing.

Appellants are correct that the appraisal did not comply with section 10309 because "the valuation date used in the appraisal" was not "within one year prior to the date of the confirmation hearing." However, the Probate Code also provides: "No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article." (§ 10316.) Thus, the sale completed pursuant to the court's confirmation order effectively passes title notwithstanding any procedural irregularity in the sale proceedings.

Next, Appellants make a number of claims related to the title of the house previously held by the Pre-Existing Trust and, in particular, challenge as outside the court's powers the grant of the NPT Order in the conservatorship proceeding. Appellants, however, failed to raise these issues in the trial court in their objection to the Maddock's second petition for confirmation of sale. Moreover, our review here is foreclosed by Appellants' failure to appeal or seek a writ in the conservatorship proceedings to either challenge the NPT Order when it was issued or challenge the resulting transfer of the house from the Pre-Existing Trust to the Court-Authorized Trust. (See § 1300 ["In all proceedings governed by this code, an appeal may be taken from the making of, or refusal to make, any of the following orders: [¶] (a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase conveyance, or exchange of

property. [¶] . . . [¶] (c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary”].)

Even if we were to reach Appellants’ arguments, we would find them to be without merit. “The scope of orders and judgments nunc pro tunc in California has consistently been described by our Supreme Court in the following terms: ‘A court can always correct a clerical, as distinguished from a judicial error which appears on the face of a decree by a nunc pro tunc order. [Citations.] It cannot, however, change an order which has become final even though made in error, if in fact the order made was that intended to be made. . . .’ (*Estate of Eckstrom* (1960) 54 Cal.2d 540, 544, italics omitted.)” (*Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890.) Here, we do not have the reporter’s transcript of the hearing for either the original Substituted Judgment or the NPT Order. Thus, Appellants cannot demonstrate that the probate court did not intend in its original Substituted Judgment to revoke all prior estate planning, such as the Pre-Existing Trust, and to enable the transfer of Richard’s house into the Court-Authorized Trust. Instead, the record shows the court would have been aware of the existence of the Pre-Existing Trust prior to issuing the Substituted Judgment and the petition for Substituted Judgment listed Richard’s house as one of the assets to be marshaled by the Court-Authorized Trust. Finally, Appellant argues that any error in drafting the Substituted Judgment in the conservatorship case could not be a court clerical error because it was drafted by Maddocks’s counsel, not the court. We find no merit to this argument as the trial court’s use of clerical assistance from counsel does not alter the clerical nature of the court’s error.

We find no merit to Appellants’ remaining arguments.

DISPOSITION

We affirm. Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.